

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1012

Introduced by Assembly Member Nation

February 22, 2005

An act to amend ~~Sections 515 and~~ *Section 515.5* of the Labor Code, relating to overtime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1012, as amended, Nation. Overtime compensation.

Existing law authorizes the Industrial Welfare Commission to establish exemptions from overtime wage requirements for certain employees, *including certain employees in the computer software field, as specified.*

This bill would make technical, nonsubstantive changes to ~~existing law~~ *these provisions relating to employees in the computer software field, and would require the Department of Industrial Relations, contingent on adequate private funding, to report annually regarding the impact of these provisions on the retention in, and recruitment to, California of computer consulting jobs. It would further require the department to provide copies of this report to the members of the Assembly Committee on Labor and Employment and the Senate Committee on Labor and Industrial Relations.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 515 of the Labor Code is amended to~~
2 ~~read:~~

1 ~~515. (a) The Industrial Welfare Commission may establish~~
2 ~~exemptions from the requirement that an overtime rate of~~
3 ~~compensation be paid pursuant to Sections 510 and 511 for~~
4 ~~executive, administrative, and professional employees, provided~~
5 ~~that the employee is primarily engaged in the duties that meet the~~
6 ~~test of the exemption, customarily and regularly exercises~~
7 ~~discretion and independent judgment in performing those duties;~~
8 ~~and earns a monthly salary equivalent to no less than two times~~
9 ~~the state minimum wage for full-time employment. The~~
10 ~~commission shall conduct a review of the duties that meet the test~~
11 ~~of the exemption. The commission may, based upon this review,~~
12 ~~convene a public hearing to adopt or modify regulations at that~~
13 ~~hearing pertaining to duties that meet the test of the exemption~~
14 ~~without convening wage boards. Any hearing conducted pursuant~~
15 ~~to this subdivision shall be concluded not later than July 1, 2000.~~

16 ~~(b) (1) The commission may establish additional exemptions~~
17 ~~to hours of work requirements under this division where it finds~~
18 ~~that hours or conditions of labor may be prejudicial to the health~~
19 ~~or welfare of employees in any occupation, trade, or industry.~~
20 ~~This paragraph shall become inoperative on January 1, 2005.~~

21 ~~(2) Except as otherwise provided in this section and in~~
22 ~~subdivision (g) of Section 511, nothing in this section requires~~
23 ~~the commission to alter any exemption from provisions~~
24 ~~regulating hours of work that was contained in any valid wage~~
25 ~~order in effect in 1997. Except as otherwise provided in this~~
26 ~~division, the commission may review, retain, or eliminate any~~
27 ~~exemption from provisions regulating hours of work that was~~
28 ~~contained in any valid wage order in effect in 1997.~~

29 ~~(c) For the purposes of this section, "full-time employment"~~
30 ~~means employment in which an employee is employed for 40~~
31 ~~hours per week.~~

32 ~~(d) For the purpose of computing the overtime rate of~~
33 ~~compensation required to be paid to a nonexempt full-time~~
34 ~~salaried employee, the employee's regular hourly rate shall be~~
35 ~~$\frac{1}{40}$ th of the employee's weekly salary.~~

36 ~~(e) For the purposes of this section, "primarily" means more~~
37 ~~than one-half of the employee's worktime.~~

38 ~~(f) (1) In addition to the requirements of subdivision (a),~~
39 ~~registered nurses employed to engage in the practice of nursing~~
40 ~~shall not be exempted from coverage under any part of the orders~~

1 of the Industrial Welfare Commission, unless they individually
2 meet the criteria for exemptions established for executive or
3 administrative employees.

4 (2) This subdivision does not apply to any of the following:

5 (A) A certified nurse midwife who is primarily engaged in
6 performing duties for which certification is required pursuant to
7 Article 2.5 (commencing with Section 2746) of Chapter 6 of
8 Division 2 of the Business and Professions Code.

9 (B) A certified nurse anesthetist who is primarily engaged in
10 performing duties for which certification is required pursuant to
11 Article 7 (commencing with Section 2825) of Chapter 6 of
12 Division 2 of the Business and Professions Code.

13 (C) A certified nurse practitioner who is primarily engaged in
14 performing duties for which certification is required pursuant to
15 Article 8 (commencing with Section 2834) of Chapter 6 of
16 Division 2 of the Business and Professions Code.

17 (D) Nothing in this paragraph exempts the occupations set
18 forth in subparagraphs (A), (B), and (C) from meeting the
19 requirements of subdivision (a).

20 ~~SEC. 2.~~

21 *SECTION 1.* Section 515.5 of the Labor Code is amended to
22 read:

23 515.5. (a) Except as provided in subdivision (b), an
24 employee in the computer software field is exempt from the
25 requirement that an overtime rate of compensation be paid
26 pursuant to Section 510 if all of the following apply:

27 (1) The employee is primarily engaged in work that is
28 intellectual or creative and that requires the exercise of discretion
29 and independent judgment, and the employee is primarily
30 engaged in duties that consist of one or more of the following:

31 (A) The application of systems analysis techniques and
32 procedures, including consulting with users, to determine
33 hardware, software, or system functional specifications.

34 (B) The design, development, documentation, analysis,
35 creation, testing, or modification of computer systems or
36 programs, including prototypes, based on and related to user or
37 system design specifications.

38 (C) The documentation, testing, creation, or modification of
39 computer programs related to the design of software or hardware
40 for computer operating systems.

1 (2) The employee is highly skilled and is proficient in the
2 theoretical and practical application of highly specialized
3 information to computer systems analysis, programming, and
4 software engineering. A job title shall not be determinative of the
5 applicability of this exemption.

6 (3) The employee's hourly rate of pay is not less than
7 forty-one dollars (\$41.00). The Division of Labor Statistics and
8 Research shall adjust this pay rate on October 1 of each year to
9 be effective on January 1 of the following year by an amount
10 equal to the percentage increase in the California Consumer Price
11 Index for Urban Wage Earners and Clerical Workers.

12 (b) The exemption provided in subdivision (a) does not apply
13 to an employee if any of the following apply:

14 (1) The employee is a trainee or employee in an entry-level
15 position who is learning to become proficient in the theoretical
16 and practical application of highly specialized information to
17 computer systems analysis, programming, and software
18 engineering.

19 (2) The employee is in a computer-related occupation but has
20 not attained the level of skill and expertise necessary to work
21 independently and without close supervision.

22 (3) The employee is engaged in the operation of computers or
23 in the manufacture, repair, or maintenance of computer hardware
24 and related equipment.

25 (4) The employee is an engineer, drafter, machinist, or other
26 professional whose work is highly dependent upon or facilitated
27 by the use of computers and computer software programs and
28 who is skilled in computer-aided design software, including
29 CAD/CAM, but who is not in a computer systems analysis or
30 programming occupation.

31 (5) The employee is a writer engaged in writing material,
32 including box labels, product descriptions, documentation,
33 promotional material, setup and installation instructions, and
34 other similar written information, either for print or for onscreen
35 media or who writes or provides content material intended to be
36 read by customers, subscribers, or visitors to computer-related
37 media such as the World Wide Web or CD-ROMs.

38 (6) The employee is engaged in any of the activities set forth
39 in subdivision (a) for the purpose of creating imagery for effects
40 used in the motion picture, television, or theatrical industry.

1 (c) Contingent on receiving sufficient contributions from
2 private sources dedicated to pay all associated costs, the
3 department shall report annually regarding the impact of this
4 section on the retention in, and recruitment to, California of
5 computer consulting jobs, and shall provide copies of the report
6 to the members of the Assembly Committee on Labor and
7 Employment and the Senate Committee on Labor and Industrial
8 Relations.

O